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AMCO INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE DOUGHERTY,)	CASE NO. C 07-01140 WDB
)	
Plaintiff,)	JOINT CASE MANAGEMENT
)	STATEMENT
v.)	
)	Date: June 4, 2007
AMCO INSURANCE COMPANY, and DOES)	Time: 4:00 p.m.
ONE through TWENTY, Inclusive,)	Dept.: 4 (in Oakland)
)	
Defendant.)	

Plaintiff Christine Dougherty ("Plaintiff") and Defendant AMCO Insurance Company
("AMCO") jointly submit this Case Management Statement and request the Court issue its Case
Management Order pursuant thereto:

1 **1. Jurisdiction and Service**

2 The Court has jurisdiction pursuant to 28 U.S.C. section 1441(b) (diversity of citizenship).
3 The parties are unaware of any issues regarding personal jurisdiction or venue. All parties have
4 been served.

5 **2. Facts**

6 On April 17, 2001, Plaintiff was injured in an automobile accident. Plaintiff incurred
7 \$7,874 in medical costs for treatment of her injuries, of which Defendant AMCO paid \$5,000
8 pursuant to the med-pay provisions of her AMCO automobile policy.

9 On April 16, 2002, Plaintiff filed suit against the other driver involved in the accident.
10 That suit settled for \$30,000, the other driver's policy limits.

11 On January 8, 2003, Plaintiff's counsel advised AMCO that Plaintiff wished to file an
12 underinsured motorist claim, and AMCO opened a file. Plaintiff's counsel sent AMCO certain
13 information in support of Plaintiff's claim. Thereafter, Plaintiff made a settlement demand to
14 AMCO of \$45,000 in addition to the monies she had already received; however, AMCO did not
15 believe that Plaintiff's claim was worth more than the \$30,000 she had received in settlement with
16 the other driver, and the \$5,000 in med-pay benefits she had received pursuant to the AMCO
17 policy. Plaintiff contends that AMCO never accepted, rejected or made a counteroffer to
18 Plaintiff's demand. AMCO contends that it advised Plaintiff's counsel that, per its evaluation of
19 Plaintiff's claim, Plaintiff was not entitled to receive underinsured motorist benefits; AMCO
20 contends further that it requested additional information regarding Plaintiff's claim but that neither
21 Plaintiff nor her counsel provided such information. In November 2004 Plaintiff demanded that
22 her claim be submitted to arbitration.

23 The parties conducted discovery and in early October 2005 agreed to have Alfred
24 Chiantelli, Judge (ret.) act as arbitrator. The arbitration hearing took place on January 26, 2006.
25 On March 1, 2006, Judge Chiantelli issued his decision, awarding Plaintiff \$107,874, which
26 equaled the underinsured motorist coverage limit of Plaintiff's AMCO policy (\$100,000), plus the
27 total amount of her medical costs (\$7,874). On March 29, AMCO issued payment to Plaintiff in
28 the amount of \$72,874 (the arbitration award less the \$35,000 already paid to Plaintiff.)

1 Plaintiff then filed this action.

2 The only factual issues in dispute may concern who said what and when during AMCO's
3 adjustment of Plaintiff's underinsured motorist claim. Other disputes regarding factual issues may
4 be defined depending on this Court's rulings on AMCO's anticipated motion for summary
5 judgment or for partial summary judgment (see below at Item No. 4.)

6 **3. Legal Issues**

7 The principal legal issues in dispute are:

- 8 a. Whether AMCO breached the insurance contract.
9 b. Whether AMCO breached the implied covenant of good faith and fair dealing.
10 c. Whether AMCO should be subjected to punitive damages.

11 **4. Motions**

12 AMCO anticipates that it will file a motion for summary judgment or motion for partial
13 summary judgment in the near future, perhaps as early as June 15, 2007.

14 **5. Amendment of Pleadings**

15 The parties do not anticipate that the pleadings will be amended.

16 **6. Evidence Preservation**

17 AMCO has undertaken to preserve all electronically stored information with respect to
18 Plaintiff's underinsured motorist claim.

19 **7. Disclosures**

20 The parties certify that according to the Court's order setting initial case management
21 conference, they have made the following disclosures on May 29, 2007:

- 22 a. Names and identifying information of witnesses;
23 b. Plaintiff's non-privileged documents pertaining to:
24 i. Plaintiff's lawsuit against the other driver, including, but not limited to:
25 (1) Pleadings;
26 (2) Deposition transcripts; and
27 (3) Settlement and Release Agreement;
28 ii. Communications between Plaintiff and Mr. Murphy; and

iii. Plaintiff's medical records, including billing statements and invoices.

c. AMCO's non-privileged documents, including, but not limited to:

i. The AMCO policy;

ii. The AMCO claim file, including electronic claim notes;

iii. The underwriting file.

Both of Plaintiff's counsel have been involved in trial in an unrelated matter for the past several weeks. Hence, the parties anticipate that their counsel will meet and confer after Plaintiff's counsel's trials conclude to discuss additional information and documents which should be disclosed but which, for various reasons, are not able to be disclosed on the initial disclosure date. The parties will be prepared to advise the Court at the time of the case management conference of agreed-upon dates when further disclosures will be made.

8. Discovery

The parties have agreed to the following tentative discovery plan and projected completion date:

- a. Deposition of Plaintiff by August 2007;
- b. AMCO requests and Plaintiff opposes the depositions of Plaintiff's counsel (in underlying litigation against other driver) and counsel's employees, September 2007;
- c. Depositions of AMCO's counsel and employees in the underinsured motorist arbitration;
- d. Depositions of percipient witnesses regarding the auto accident, October 2007;
- e. Depositions of Plaintiff's health care providers, November 2007;
- f. Depositions of AMCO's claims representative(s), December 2007;
- g. Depositions of AMCO's counsel (in arbitration), December 2007;
- h. Depositions of experts, per rule based on trial date;
- i. Written discovery (interrogatories, requests for production of documents, subpoenas to third parties for documents, requests for admissions), as necessary.

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1 **9. Class Actions**

2 Not applicable.

3 **10. Related Cases**

4 There are no pending related cases.

5 **11. Relief Sought**

6 By her complaint, Plaintiff seeks general damages for emotional distress, humiliation, and
7 mental anguish, according to proof; for lost interest and/or interest incurred on monies borrowed,
8 increased litigation expenses, increased personal expenses, increased attorneys' fees, and other
9 financial losses, according to proof; exemplary (punitive) damages, according to proof; reasonable
10 attorneys' fees and costs and expenses of litigation; and prejudgment interest.

11 **12. Settlement and ADR**

12 The parties have filed a Stipulation and Proposed Order Selecting an ADR process,
13 specifying "Private Mediation." The parties are exploring the selection of possible service
14 providers and the designation of a particular mediator.

15 **13. Consent to Assignment to United States Magistrate Judge for Trial**

16 Plaintiff does not consent to the assignment of this action to a United States Magistrate
17 Judge for trial.

18 AMCO does consent to the assignment of this action to a United States Magistrate Judge
19 for trial.

20 **14. Other References**

21 Plaintiff believes that the case is suitable for reference to binding arbitration, a special
22 master, or the Judicial Panel on Multidistrict Litigation.

23 AMCO does not believe that the case is suitable for reference to binding arbitration, a
24 special master, or the Judicial Panel on Multidistrict Litigation.

25 **15. Narrowing of Issues**

26 The parties believe the issues are straightforward and succinctly stated: (1) Did AMCO
27 breach the insurance contract in not agreeing to pay Plaintiff's demand or any other sum with
28 respect to Plaintiff's underinsured motorist claim? (2) If AMCO did breach the insurance contract,

1 did AMCO also act in bad faith? (3) If AMCO did breach the contract and acted in bad faith, what
2 are Plaintiff's damages?

3 **16. Expedited Schedule**

4 The parties do not believe this action can be handled on an expedited basis with
5 streamlined procedures.

6 **17. Proposed Schedule**

7 Designation of Experts: February 1, 2008
8 Discovery Cut-off: March 1, 2008
9 Dispositive Motions: March 15, 2008
10 Pre-trial Conference: April 1, 2008
11 Trial: April 14, 2008 (10-12 court days)

12 **18. Trial**

13 The case will be tried to a jury.

14 **19. Disclosure of Non-part Interested Entities or Persons**

15 The parties have filed their respective "Certification of Interested Entities or Persons." The
16 identities of persons, associations, firms, partnerships, corporations and other entities known by
17 the parties to have (1) a financial interest in the subject matter at issue or in a party to this action,
18 or (2) any other kind of interest that could be substantially affected by the outcome of this action,
19 are:

- 20 a. Plaintiff Christine Dougherty
- 21 b. Plaintiff's husband Malcolm Rayburn
- 22 c. Plaintiff's counsel of record, Messrs. Murphy and Porter, and attorneys and
23 employees associated with them;
- 24 d. Defendant AMCO Insurance Company, and its affiliated entities and employees;
- 25 e. AMCO's counsel of record in this action, Lewis Brisbois Bisgaard & Smith LLP,
26 and attorneys associated with that firm.

27 ///

28 ///

20. **Miscellaneous**

Counsel for the parties will be prepared at the time of the Case Management Conference to provide additional information as the Court may deem necessary to facilitate the just, speedy and inexpensive disposition of this matter.

DATED: May 29, 2007

Respectfully submitted,

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